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Supreme Court of the United States

OCTOBER TERM, 1946

No. _____

THE FOXBORO COMPANY

Petitioner-Plaintiff

v.

TAYLOR INSTRUMENT COMPANIES

Respondent-Defendant

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Foxboro Company, petitioner v. *Taylor Instrument Companies,* respondent, respectfully prays for writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit to review the judgment of that Court pursuant to its opinion filed on July 25, 1946 (157 F. 2d 226; Plf. R. 1545) and denial, September 12, 1946, of the timely petition for rehearing (157 F. 2d 234; Plf. R. 1583). This judgment reversed that of the District Court of the United States for the Western District of New York. The judgment of the District Court was in favor of the plaintiff-petitioner, The Foxboro Company (58 F. Supp. 313; Dft. R. 657-677).

Jurisdiction to Review the Judgment

The Supreme Court has jurisdiction of this petition under Section 240(a) of the Judicial Code as amended by

the Acts of February 13, 1925, U. S. C. Title 28, Section 347(a), January 31, 1928, March 8, 1934 and June 7, 1934, and under U. S. C. Title 28, Section 350. The effective date of the entry of the judgment is September 12, 1946, within three months last past.

Reasons for the Writ

By its judgment the Circuit Court of Appeals for the Second Circuit has decided against The Foxboro Company, the plaintiff-appellee, because of what the petitioner for certiorari respectfully submits to be four errors of law in matters of general public importance and in conflict with the decisions of the Supreme Court and in conflict with the decisions of other Circuit Courts of Appeal, namely:

1. The Court of Appeals for the Second Circuit has based its decision on an erroneous assumption that the Supreme Court in recent decisions has revolutionized the law determining the boundary between invention and skillful application, whereas these decisions reaffirm the existing law. The most recent conflicting decisions in the Circuit Courts of Appeal are these:

> The First Circuit (*Brown & Sharpe Mfg. Co.* v. *Kar Engineering Co.*, 154 F. 2d 48, 51, 52), decided March 14, 1946, that "In *Anderson Co.* v. *Lion Products Co.*, 1 Cir., 1942, 127 F. 2d 454, 457, and *Bellavance* v. *Frank Morrow Co.*, 1 Cir., 1944, 140 F. 2d 419, 423, although not necessary to our decisions, we indicated that we inclined to the view that the *Cuno* case set a higher standard for invention. Now, however, we think that view mistaken. (Par.) In the second place later decisions of the Supreme Court indicate, we think unmistakably, that all that was intended in the *Cuno* case was a restatement of the classic test."
>
> The Second Circuit (*Foxboro Co.* v. *Taylor Instrument Cos.*, 157 F. 2d 226, 234), decided September 12, 1946, that "Finally, when all else is said, we cannot ignore the change in recent years in the standard of invention adopted by the Supreme Court. It is as idle to pre-

> tend that there has been no change (*In re Shortell,* 142 F. 2d 292, 31 C. C. P. A., Patents, 1062), as it would be to protest against it; and it is as much the duty of a lower court to give effect to it, as it is its duty to give effect to any other of the decisions of that court. We are to dispose of the question of invention, so far as we can divine, as we think the Supreme Court would dispose of it; and, once the cloud of complicated scientific theory, with which it has been surrounded, is blown away, and the issues are bared as they really are, we have no doubt that that court would hold the claims invalid. Judgment reversed; complaint dismissed." (Plf. R. 1558)

This conflict is of vast public importance. This is set out in more detail later.

2. The Court of Appeals for the Second Circuit, learned and experienced in law and wholly inexperienced in planning, building and operating machines for automatic temperature and pressure control at fractional degrees in ranges of many hundreds of degrees, has substituted its judgment, not of law but of pure fact on the question of invention (*Williams Co.* v. *United Shoe Machinery Corp.,* 316 U. S. 364, 367), for that based upon the oral evidence of men experienced in planning, building and operating such machines, unseen by the Court of Appeals and seen, heard and believed by the judge of the District Court who decided this question of fact on the evidence in the case. Such a reversal is in conflict with many uniform decisions of the Supreme Court and of other Circuit Courts of Appeal (*Adamson* v. *Gilliland,* 242 U. S. 350, 353; *Stilz* v. *United States,* 269 U. S. 144, 147; *McCaughn* v. *Real Estate Co.,* 297 U. S. 606, 608; *Hazeltine Corporation* v. *General Motors Corporation,* October 19, 1942, C. C. A. 3d, 131 F. 2d 34, 37).

3. The Circuit Court of Appeals for the Second Circuit in its decision rejects "the industry's acceptance of these machines as any evidence whatever that Mason's claims were valid" (157 F. 2d 233, 234; Plf. R. 1557). This is in

conflict with uniform decisions of the Supreme Court and of other Circuit Courts of Appeal. One of the latest of these (*Goodwin* v. *Borg-Warner Corp.*, July 1, 1946, C. C. A. 6th, 157 F. 2d 267, 273) is that "The rapid and widespread acceptance of his device is evidence to be considered on the question of invention".

4. The Circuit Court of Appeals for the Second Circuit has decided as a fact that in this art "the tempo has been . . . swift" (157 F. 2d 234; Plf. R. 1558). This decision is based exclusively on patents put before the Court in an attempt to show anticipation. The decision conflicts with the oral testimony of the witnesses seen, heard and believed by the judge of the District Court who decided this question of fact on this evidence, as to which there was no conflict. It showed that the need for this invention and the search to achieve it had continued over many years. The decision conflicts with the uniform decisions of the Supreme Court and of other Circuit Courts of Appeal, deciding the weight to be given by an appellate court, not seeing and hearing the witnesses, to the decision on a question of fact made upon that evidence by a judge who did see, hear and believe the witnesses.

The Invention as Found in Fact by the District Court

(Dft. R. 678-689, 657-677)

The Foxboro Company, the plaintiff, owns United States letters patent, reissue No. 20,092, granted September 1, 1936 to Clesson E. Mason, for a pneumatically operated proportioning controller and a pneumatically operated proportioning-plus-reset controller, for new combinations of old elements, disclosing sufficiently to enable a person skilled in the art to construct such a machine (R. 678). It is for controlling temperature processes in the oil and chemical industries by regulating fuel flow in response to process temperature behavior. It produces effectively accurate proportional changes in an operating output pressure in

response to changes of the measuring element sensing the temperature behavior. It may be operated by measuring elements capable of exerting only a very weak force (R. 679). The proportioning-plus-reset controller includes the elements of the proportioning controller and in addition a reset motor opposing the proportioning motor (R. 679). The machines and their operation in fact are found in detail (R. 678-680, 658, 659).

Prior to Mason's invention there was no proportioning controller and no proportioning-plus-reset controller universally applicable to all types of processes; nor any controller for difficult processes and capable of controlling such conditions as temperature, chemical concentration, and the like, to which conditions only low power measuring elements could respond (R. 680, 681).

Many processes are not adapted to produce practical operation of powerful measuring elements, for powerful measuring elements are not sufficiently sensitive to such conditions (R. 681).

Prior to Mason's invention there existed no accurate proportioning controllers and no accurate proportioning-plus-reset controllers which could be operated by a weak measuring element (R. 681).

Beginning about 1920 was the advent of difficult and complicated manufacturing processes (particularly in the fields of oil and chemical manufacture) for which there were no available adequate controllers for automatic control. Various attempts were made to meet the need during the ensuing ten years and without success until Mason's invention did so (R. 682-684, 657, 662).

Although placed on the market in a period of business depression, the device met with commercial success and the sales increased rapidly from year to year without the aid of special advertising or sales promotion (R. 684, 662, 663, 675).

These inventions solved control problems that had long confronted industry and which many inventors had tried to solve and had failed. The inventions were an important

advance in the art of automatic control and are inventive and patentable combinations (R. 665, 685).

After the plaintiff's invention came on the market the defendant put on the market an infringing device (R. 685-689, 663-665).

None of the patents introduced by the defendant anticipated Mason's invention (R. 689, 670-671).

Claims 10 and 13 are definite (R. 675). They distinguish over the prior art (R. 675). They adequately describe Mason's invention (R. 675).

Mason's invention was an important advance in the application of controllers to commercial processes (R. 662).

It constitutes a landmark invention of the present century and has wholly altered the course of development in many industries (R. 662).

It was adopted by leading manufacturers in this country and abroad, attesting to its outstanding practical performance and success in solving the difficult problems of automatic control (R. 663).

The opinion of the Circuit Court of Appeals starts by referring to the opinion in the District Court for the general nature of the invention (157 F. 2d 227; Plf. R. 1545) and goes on with a description of the detailed resemblances between the different elements of Mason's combination and earlier elements (pp. 228-233; Plf. R. 1548-1556) and, without any adequate discussion of the novelty in the combination of these as set out in the claims, concludes that there was no invention, for the reasons, erroneous, it is respectfully submitted, stated at the outset of this petition (157 F. 2d 234; Plf. R. 1558). In this the Court of Appeals has failed, it is respectfully submitted, to give due weight in the application of the patent statute, to the long established principle implicitly recognized by the Supreme Court, November 18, 1946, in *Halliburton Oil Well Cementing Co.* v. *Walker*, 329 U. S. , that "We are not persuaded that the public and those affected by patents should lose the protection of this statute merely because the patented device is a combination of old elements".

The Uncontroverted Evidence Supports the Finding of Fact of Invention by the District Court

It is assumed that the Supreme Court will not tolerate in this petition an extended reference to the evidence. The evidence is ample and indisputable that Mason's conception, fully set out in the claims, more particularly 10 and 13, was of a device which could not be reached by skill in the art without inventive imagination and application.

This was oral evidence by experienced planners and operators in this art, seen, heard and believed by the judge of the District Court.

The references are to the pages of that testimony in the Appendix of the Appellee.

The controller industry began looking in 1920 (pp. 8, 9). With unsatisfactory results until 1930 (p. 9).

The attempts to solve the problem since 1920 (p. 11) and extending to page 1068.

Mason's description of the difficulties, and of the invention which solved them (pp. 10-84, 109-214, 291-709, 921-923, 1013-1068). Hall's testimony to the impossibility in practice of getting a satisfactory result without Mason's device (pp. 84-109). Sperry's testimony confirming this (pp. 241-290, 975-997). Haywood's testimony to the impracticability of the former devices and the efficiency of the plaintiff's (pp. 709-734). Sachse's testimony of the same import (pp. 734-773). Grebe's (pp. 773-780). Webb's (pp. 780-799). Bright's (pp. 799-821). Bosomworth's (pp. 821-832). Mooney's (pp. 832-844). Laird's (pp. 844-865). White's (pp. 865-878). Sullivan's (pp. 878-888). McCulley's (pp. 888-921). Hardman's (pp. 928-944). Yoxall's (pp. 944-964).

This upwards of one thousand pages of testimony was of men practising in this field. It was wholly believable. It was believed by the judge of the District Court. It showed the need of this device over a period of many years. It

showed the efforts of intelligent experts to find a solution. It showed the complete failure until Mason got the idea.

Such testimony that this could not be done without invention is much more convincing than the decision of any judge, howsoever learned in the law and not experienced in this highly technical field, that a practical expert could have got this without inventing it.

The opinion of the Circuit Court of Appeals in reality substitutes an assumption by a court not practically experienced in this field for the evidence in the case, believed by the judge who saw and heard the witnesses. Even that which may look easy after it has been invented and described, if it had been easy, would have been produced in the long years of effort of experts if it had been so easy as not to require invention.

The judge of the District Court who saw and heard these men perceived the fact and reached his judgment thereon.

On these facts the petitioner represents, for the reasons more fully described in the brief filed herewith and made a part hereof, that the four errors of law claimed above in matters of general public importance and in conflict with the decisions of the Supreme Court and of other Circuit Courts of Appeal were made by the Circuit Court of Appeals for the Second Circuit.

The petitioner presents herewith a certified copy of the entire record in this case, including the opinion of the Circuit Court of Appeals for the Second Circuit, and appends hereto a brief.

WHEREFORE, the petitioner respectfully prays that a writ of certiorari be issued to the Circuit Court of Appeals for the Second Circuit to the end that said cause may be reviewed and determined by this Honorable Supreme Court as provided by law, and that the said decision of the said Circuit Court of Appeals be reversed and the final judgment of the District Court for the Western District of New York for the petitioner be reinstated and that your peti-

tioner may have such other and further relief in the premises as to this Honorable Supreme Court may seem just and proper.

THE FOXBORO COMPANY

By its Attorneys,

EDWARD F. MCCLENNEN
EDWARD G. CURTIS
CHARLES C. LADD

We, counsel for the petitioner, hereby certify that the foregoing petition is presented in good faith and not for the purpose of delay, and that in our opinion the case is a proper one for the issuance of the writ of certiorari prayed for.

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December 2, 1946.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

In order to make the petition summary and short the petitioner has omitted reference to the features of this case as to which the decision of the Circuit Court of Appeals was in the petitioner-plaintiff's favor and matters not pertinent to the four errors of law claimed. The petitioner submits that the judgment of the District Court was right in sustaining as an invention claims 10 and 13 of reissue patent No. 20,092, granted September 1, 1936 to Clesson E. Mason and owned by The Foxboro Company, the plaintiff.

The petitioner presents for the consideration of the Court the four errors claimed.

1. The conflicting decisions among the Circuit Courts of Appeal as to the interpretation of the opinions of the Supreme Court defining the boundary line of invention.

In the First, Seventh and Eighth Circuits and in the Court of Customs and Patent Appeals the Court of Appeals has decided that the Supreme Court in its recent opinions has reaffirmed the law as it certainly was up to the decision in *Cuno Corp.* v. *Automatic Devices Corp.*, November 10, 1941, 314 U. S. 84.

In the Second Circuit and in the Sixth Circuit the Court of Appeals has held that the Supreme Court changed the law which theretofore had furnished the boundary line of invention.

In the Sixth Circuit the Court of Appeals has not adopted the new test devised by the Second Circuit. This latest test is that nothing is invention which is preceded by a number of trials and failures. With this test the Second Circuit now eliminates as unpatentable the largest class of advances that are recognized by the other circuit courts and by the Supreme Court as entitled to patent protection.

In the Third, Fourth, Fifth, Ninth and Tenth Circuits the general question appears to be still at large.

The gravity of this conflict on a question of so great public importance is apparent. Whichever is the sound interpretation of the opinions of the Supreme Court on this boundary question, the need of a decision of that Court ending the conflict is great. No otherwise can it be done.

The peril is to the adopter of a device tendered in the market, to the inventor in search of a novel means of meeting a need, to the lawyer advising on the patentability of the device, to the applicant for a patent, to the formulator of claims, to the administration in the patent office, to the lawyer advising whether a patented device may be used, and to the courts called upon to exercise judgment on this question.

The petitioner has lost its patent because circumstances required suit in the Second Circuit, and is aggrieved. If the suit might be in the First Circuit the petitioner would have its patent, as sustained by the judge of the District Court in the case at bar.

It is respectfully urged that the Supreme Court should grant the writ irrespective of what the decision in the case is to be, and so to end this conflict.

The pertinent decisions are:

In the First Circuit, *Brown & Sharpe Mfg. Co.* v. *Kar Engineering Co.*, March 14, 1946, 154 F. 2d 48, certiorari denied June 10, 1946, 328 U. S. , 66 S. C. R. 1377; in the Seventh Circuit, *Chicago Steel Foundry Co.* v. *Burnside Steel Foundry Co.*, January 20, 1943, 132 F. 2d 812, 817; in the Eighth Circuit, *Sbicca-Del Mac* v. *Milius Shoe Co.*, November 18, 1944, 145 F. 2d 389, 394; in the Court of Customs and Patent Appeals, *In re Shortell*, April 4, 1944, 142 F. 2d 292, 296; in the Second Circuit the case at bar, 157 F. 2d 226, 234; in the Sixth Circuit, *United States Gypsum Co.* v. *Consolidated Exp. Met. Co.*, October 6, 1942, 130 F. 2d 888, 892, declining to go the length taken in the Second Circuit first stated and applied in 1942, and applied in the case at bar.

In this length of restriction the Second Circuit appears to be alone. This length was reached in the Second Circuit after the Cuno case by deciding that the Supreme Court has shown an increasing disposition to raise the standard of originality necessary for a patent, and by adopting the new test (*Picard* v. *United Aircraft Corporation,* 128 F. 2d 632, 636 and, *F. A. Smith Mfg. Co. Inc.* v. *Samson-United Corp.,* Aug. 1942, 130 F. 2d 525, 531, C. C. A. 2).

Without hesitation it is to be said that the Supreme Court would not indulge a disposition to change the law enacted by the Congress within the provisions of the Constitution, and surely not to exclude an important class of inventions from protection under the law. That Act, 35 U. S. C. Section 31, provided two classes of persons who could obtain a patent, namely, one who has "invented" and the other, one who has "discovered" any new and useful machine or improvement therein.

"Invented" as used in the statute and "inventors" as used in the Constitution had a generally accepted meaning when first used. That meaning has not changed. True, a device which met that meaning at one time, later becomes so much common property that a repetition of it is not invention. The standard of originality has not changed. The Supreme Court has given no indication of a change.

The opinion in *Cuno Corp.* v. *Automatic Devices Corp.,* 314 U. S. 84, reiterates the time honored principle that (90) "if an improvement is to obtain the privileged position of a patent more ingenuity must be involved than the work of a mechanic skilled in the art". (91) "That is to say, the new device, however useful it may be, must reveal the flash of creative genius, not merely the skill of the calling". The context gives no suggestion that the attention-arresting phrase "flash of creative genius" is used to mean anything except more than "merely the skill of the calling". The decisive language of the Court (88) is that "The Mead device was not the result of invention but a 'mere exercise of the skill of the calling', an advance 'plainly indicated by the prior art' ".

In this decisive language there is nothing to indicate that for invention it is necessary to do more than to exceed "the skill of the calling".

The later decisions of the Supreme Court give no support for any requirement except that the device has not been the product of a "mere exercise of the skill of the calling".

In *Sinclair & Carroll Co., Inc.* v. *Interchemical Corp.*, 325 U. S. 327, 330, the Supreme Court reiterates the long established principle and cites for this standard definition seven decisions, beginning with *Hicks* v. *Kelsey,* 18 Wall. 670, and ending with the very case under discussion, *Cuno Engineering Corp.* v. *Automatic Devices Corp.*, 314 U. S. 84, 90. That is the proposition for which the Supreme Court cites the case under discussion. It does so May 21, 1945.

It is respectfully submitted that the Circuit Court of Appeals for the Second Circuit has made, erroneously, additions to the true significance of the opinions of the Supreme Court and that the conflict with the other Circuits which the Second Circuit has thereby created should be ended by a decision of the Supreme Court.

2. The error in reversing a finding of fact of the District Court based on ample supporting oral evidence.

Whether a device is an invention in that its production goes beyond a mere exercise of the skill of the calling is a question of fact (*Williams Co.* v. *United Shoe Machinery Corp.*, 316 U. S. 364, 367). The facts of the calling are to be determined by the evidence of those experienced in the calling. The decision of a judge who heard that evidence and saw the witnesses should prevail, if the evidence permits it, over a decision of a Court of Appeals not experienced in that calling and which did not see or hear the witnesses. (*Adamson* v. *Gilliland*, 242 U. S. 350, 353; *Stilz* v. *United States*, 269 U. S. 144, 147; *McCaughn* v. *Real Estate Co.*, 297 U. S. 606, 608; *Hazeltine Corporation* v.

General Motors Corporation, October 19, 1942, C. C. A. 3d, 131 F. 2d 34, 37.)

In the thousand pages of oral testimony there is abundant evidence that Mason's device was beyond ascertainment by the exercise of the skill of the calling. The urgent need for such a device had been on for more than ten years. Those skilled in the calling had tried to meet it. All those skilled in the calling had failed until Mason conceived of a novel approach by a novel combination which gave immediate operating success and consequent unstimulated commercial success where those skilled in the calling had failed.

This new conception was an inspiration, a flash of genius, in short an invention.

It was not a whittling, a filing, a polishing, a reshaping, a readjustment, an improving, a perfecting within the power of the unimaginative, uninventive man skilled in the calling. It was the novel combination of a member in a relation not before thought of in the diligent efforts of skilled men over a period of more than ten years, of urgent need.

The judge of the District Court gave his verdict based on this abundant evidence (R. 678-685, 662, 675).

It is respectfully submitted that it was an error to substitute a contrary finding of fact by the Court of Appeals for the finding of fact of the judge of the District Court, who had seen, heard and believed the witnesses. The decision is in conflict with those above cited and others in the Supreme Court and the Courts of Appeal of other Circuits.

3. The error in rejecting the industry's acceptance of these machines as any evidence whatever that Mason's claims were valid.

The judge of the District Court found that the "subject matter of the patent is extremely intricate and difficult to comprehend" (R. 671). In this intricate mechanism Mason combined motor devices in a combination, the effect of which was for the first time to get accurate immediate control action while at the same time imposing no force on the

measuring element. This novelty brought operating success at once in contrast to failures at the hands of the most skillful in the calling who had been seeking over years to meet a long time observed need.

The success was directly attributable to the novel combination claimed. Sachse (S. O. Co. of Ohio) at Plf. R. 748 and 763; Grebe (Dow Chemical Co.) at Plf. R. 779; and Bright (Eastman Kodak Co.) at Plf. R. 816, 819, described difficult temperature and flow problems encountered in their respective industries, stated that these problems were not solved by prior controllers, and that they were solved by the Mason controller because it gave accurate proportioning and reset control actions when applied to the difficult processes they described. Mason, Plf. R. 123, 128-130, 135, 136, 347, 384, 385, 532, described each of the elements and the manner in which they coact to produce accurate proportioning and reset action. Mason's claims 10 and 13 recite the very combinations of elements which he testified produce the accurate proportioning and reset actions that Grebe, Sachse and Bright said were responsible for the success of Mason's instrument.

The operating success immediately brought commercial success in a market in a period of business depression and without the aid of special advertising or sales promotion (Dft. R. 684, 662). These facts are found by the District judge to be the facts. They are not open to reasonable controversy. The Court of Appeals, after describing what may at large account for success, in ways foreign to the evidence in this case and to the findings of fact of the judge of the District Court thereon, decides that "We therefore reject the industry's acceptance of these machines as any evidence whatever that Mason's claims were valid" (157 F. 2d 233, 234; Plf. R. 1557). This decision is in conflict with decisions in other Circuits of long standing and repeated as late as this year (*Goodwin* v. *Borg-Warner Corporation,* C. C. A. 6th, 157 F. 2d 267, 273; *Sbicca-Del Mac* v. *Milius Shoe Co.,* November 18, 1944, C. C. A. 8th, 145 F. 2d 389, 395).

It is respectfully submitted that when resolving the question of fact, whether in this complicated mechanism there was a novel combination, and when it has been found that the novel combination was an important practical advance which was the cause of the adoption of the device by leading manufacturers in this country and abroad (Dft. R. 662, 663), and when there was no evidence that this was due to sales promotion and a finding that it was not (R. 684, 662), and when it is found that these inventions were what solved the control problems (R. 684), and when there was no evidence that the success was due to any excellence of design or fineness of workmanship or existing repute of the maker, it is a serious error of law to reject the industry's acceptance of these machines and to conclude as a fact, contrary to the finding of the judge of the District Court, that this acceptance was not due to the novelty of the invention found in fact by the District Court.

4. The error in the finding of fact by the Court of Appeals as to the tempo of the art.

Manifestly, the tempo of this art was a matter not of law but of fact. The Court of Appeals, considering the patents laid before it in the effort of the defendant to show anticipation, decided in fact that this tempo was swift (157 F. 2d 234; Plf. R. 1558). This sets aside the finding of fact of the judge of the District Court that the tempo had been so slow that it required more than ten years of urgent need and skilled unsuccessful effort to meet it before Mason's invention did it (Dft. R. 682, 685).

These unsuccessful skillful efforts had reached the point of full patent application disclosures. The best work of over ten years had failed. This was not a swift tempo in advancing skill of the calling.

There was nothing swift unless it be the flash of genius, the inspiration, the conception by Mason which he rapidly reduced to practice and to acceptability by practical manufacturers who had long sought and needed this invention. The decision in substituting this finding by the Court of

Appeals for the finding of fact by the judge of the District Court, who saw, heard and believed the witnesses, is in conflict with the decisions of the Supreme Court and in other Circuits cited under division 2 above, which established that the findings of fact of the District Court, warranted by the evidence, should prevail in the Court of Appeals.

Conclusion

The plaintiff's petition deserves to be granted.

Respectfully submitted,

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Counsel for the Petitioner.

December 2, 1946.